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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FRANK H. FINKEL, et. al.,

Plaintiffs,

MEMORANDUM AND ORDER

CV 05-4656

-against-

(Wexler, J.)

S.I. ASSOCIATES CO., INC. and
NASSAU READY MIX CORP.,

Defendants.

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APPEARANCES:

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WEXLER, District Judge

This is an action brought pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"). The action was commenced by Plaintiffs in their capacities as Trustees and

Fiduciaries of the Local 282 Welfare, Pension, Annuity, Job Training and Vacation and Sick Leave Trust Funds (the "Trustees" or the "Plaintiffs"). Plaintiffs seek unpaid benefit plan contributions as well as interest, liquidated damages and attorneys fees pursuant to ERISA. Named as defendants are S.I. Associates Co., Inc. ("SI") and Nassau Ready Mix Corp. ("Nassau") (collectively "Defendants").

Plaintiffs allege that Defendants are liable for payments to the Funds pursuant to the theories of single employer, joint employer, alter ego and/or double breasted corporate relationship. It is Plaintiff's theory that SI transferred its previously union business to Defendant Nassau, a non-union business, to circumvent benefit contribution obligations. Defendants deny this contention and move for summary judgment dismissing the complaint.

Upon consideration of the papers in support of and in opposition to the motion, this Court finds that genuine issues of material fact regarding the Defendants' businesses exist precluding the entry of summary judgment with respect to plaintiffs' claims. See Fed. R. Civ. P. 56(c) (a party seeking summary judgment must demonstrate that "there is no genuine issue of any material fact and that the moving party is entitled to a judgment as a matter of law."); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); Donohue v. Windsor Locks Bd. of Fire Comm'rs, 834 F.2d 54, 57 (2d Cir. 1987). Accordingly, Defendants' motion for summary judgment is denied.

SO ORDERED.


LEONARD D. WEXLER
UNITED STATES DISTRICT JUDGE

Dated: Central Islip, New York
August 20, 2007

MOVANT'S COUNSEL IS DIRECTED TO SERVE A COPY
OF THIS ORDER ON ALL PARTIES UPON RECEIPT.

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